

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4 and 476.1 and 2009 Iowa Acts, Senate File 279 [Iowa Code Supplement section 478.1(5)], the Utilities Board (Board) gives notice that on December 9, 2009, the Board issued an order in Docket No. RMU-2009-0006, In re: Requirements for Abbreviated Franchise Petition [199 IAC Chapter 11], “Order Adopting Amendments.” The Board is adopting amendments to 199 IAC Chapter 11 to establish an abbreviated franchise process where an electric company is upgrading 34.5 kilovolt (kV) electric lines to be capable of operating at 69 kV, so long as the upgrade meets certain conditions. This proceeding was initiated by an order issued May 28, 2009. Notice of Intended Action on the proposed amendments was published in IAB Vol. XXXI, No. 26 (6/17/09) p. 2785, as **ARC 7859B**.

Written comments concerning the proposed amendments were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), MidAmerican Energy Company (MidAmerican), Interstate Power and Light Company (IPL), and ITC Midwest LLC (ITC). To allow for oral comments and questions from the Board, the Board scheduled an oral presentation for July 28, 2009. On July 10, 2009, the Board issued an order rescheduling the oral presentation for August 20, 2009. An Amended Notice of Intended Action reflecting the change in the date for the oral presentation was published in IAB Vol. XXXII, No. 3 (7/29/09) p. 319, as **ARC 8012B**.

On August 20, 2009, the Board held the oral presentation. IPL, MidAmerican, Consumer Advocate, ITC, and the Iowa Association of Electric Cooperatives (IAEC) appeared at the oral presentation. On August 28, 2009, the Board issued an order allowing interested persons the opportunity to file additional comments. On September 8, 2009, IPL, ITC, and Consumer Advocate filed additional comments.

The Board is adopting the proposed amendments to 199 IAC 11.1(9) with certain revisions based upon consideration of the comments. In addition to some minor revisions, the Board is revising the definition of “substantially the same right-of-way” to exclude conductor and overhang and anchor easements in the calculation of the one-mile threshold. In this rule making, the Board did not propose a definition for the requirement that a line have “substantially the same effect on the underlying properties.” The Board will not adopt a definition for this standard in this rule making since it did not propose a definition in the Notice of Intended Action or request comment on the issue. However, the Board did provide guidance on its interpretation of this standard in the order adopting amendments. The Board stated that the exemption for conductor and overhang and anchor easements complies with the “substantially the same effect on the underlying properties” standard. The Board also stated that it would interpret this standard as requiring that the line remain in the public right-of-way, the upgraded line be for substantially the same use as the existing line, and the upgraded line will not be a substantially greater obstruction to the use of the property.

The Board is also adopting revisions to 199 IAC 11.2(3) to remove the requirement that the petitioner include approval from the appropriate highway authority in the petition. Finally, the Board is revising 199 IAC 11.5(11) to require only one month’s notice in advance of construction to landowners and persons residing on affected property. The order adopting the amendments can be found on the Board’s electronic filing Web site at <http://efs.iowa.gov>.

These amendments are intended to implement Iowa Code sections 17A.4 and 476.1 and 2009 Iowa Acts, Senate File 279 [Iowa Code Supplement section 478.1(5)].

These amendments will become effective on February 3, 2010.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 11.1(9):

11.1(9) Eligibility for abbreviated franchise process. Petitions for an electric franchise or an amendment to a franchise may be filed pursuant to the abbreviated franchise process set forth in 2009 Iowa Acts, Senate File 279 [Iowa Code Supplement section 478.1(5)], if the following requirements are met:

a. The project consists of the conversion, upgrading, or reconstruction of an existing electric line operating at 34.5 kV to a line capable of operating at 69 kV.

b. The project will be on substantially the same right-of-way as an existing 34.5 kV line. For purposes of this subrule, “substantially the same right-of-way” means that the new or additional interests in private property right-of-way will be required for less than one mile of the proposed project length. Easements required for conductor and crossarm overhang of private property or for anchor easements shall not be considered when determining the length of additional interests in private property right-of-way.

c. The project will have substantially the same effect on the underlying properties as the existing 34.5 kV line.

d. The completed line will comply with the Iowa electrical safety code found in 199—Chapter 25.

e. Notice will be provided as required in subrule 11.5(11).

f. The petitioner does not request the power of eminent domain.

g. The petitioner agrees to pay all costs and expenses of the franchise proceeding.

Petitions that do not comply with the eligibility requirements in paragraphs 11.1(9) “a” through “g” shall be rejected.

ITEM 2. Adopt the following **new** subrule 11.2(3):

11.2(3) Form of petition for abbreviated franchise process. A petition for a new franchise or an amendment to a franchise filed pursuant to the abbreviated franchise process set forth in 2009 Iowa Acts, Senate File 279 [Iowa Code Supplement section 478.1(5)], shall be made on forms prescribed by the board, shall be notarized, and shall have all required exhibits attached. Exhibits in addition to those required by this subrule may be attached when appropriate. The exhibits that are required to be attached are as follows:

a. *Exhibit A.* A legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning and ending points of the line, and whether the route is on public, private, or railroad right-of-way. The description shall identify any termini located in other counties.

b. *Exhibit B.* A map showing the route of the line drawn with reasonable accuracy considering the scale. The map may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

(1) The route of the electric line which is the subject of the petition, including the starting and ending points and, when parallel to a road or railroad, the side on which the line is located. Line sections with double circuit construction or underbuild shall be designated. The nominal voltage and ownership of other circuits or underbuild shall be indicated.

(2) The name of the county, county and section lines, section numbers, and the township and range numbers.

(3) The location and identity of roads, railroads, major streams and bodies of water, and any other significant natural or man-made features or landmarks.

(4) The name and corporate limits of cities.

(5) If any deviation from the existing route is proposed, the original and proposed routes shall be shown and identified.

c. *Exhibit C.* Technical information and engineering specifications describing typical materials, equipment, and assembly methods as specified on forms provided by the board.

d. *Exhibit D.* The exhibit shall consist of written text containing the following:

(1) A listing of any existing franchises that would be terminated or amended in whole or in part by this petition, including the docket number, franchise number, date of issue, county of location, and to whom granted.

(2) An allegation, with supporting testimony, that the project is eligible for the abbreviated franchise process.

(3) An allegation, with supporting testimony, that the project is necessary to serve a public use and represents an overall plan of transmitting electricity in the public interest.

- (4) An explanation for any deviations from the existing line route.
- e. Exhibit E.* A statement that the right of eminent domain is not being requested.
- f. Exhibit F.* The exhibit shall consist of a showing of notice to other electric, pipeline, telephone, communication, cable television, rural water district, and railroad companies that are crossed by or in shared right-of-way with the proposed electric line.
- g. Exhibit G.* The exhibit shall consist of the form of notice to be mailed in accordance with subrule 11.5(11) to owners of and persons residing on property where construction shall occur.

ITEM 3. Adopt the following new paragraph **11.3(1)“g”**:

- g.* Petition for Franchise or Amendment to Franchise Under Abbreviated Franchise Process.

ITEM 4. Adopt the following new subrule 11.5(11):

11.5(11) *Notice of franchise or amendment to franchise under abbreviated franchise process.*

a. Petitioner shall provide written notice concerning the anticipated construction to the last-known address of the owners of record of the property where construction will occur and to persons residing on such property one month prior to commencement of construction. Notices may be served by ordinary mail, addressed to the last-known address of the owners of record of the property and to persons residing on such property. Petitioner must make a good-faith effort to identify and notify all owners of record and persons residing on the property.

b. The notice shall include the following information:

- (1) A description of the purpose of the project and the nature of the work to be performed.
- (2) A copy of the Exhibit B map.
- (3) The estimated dates the construction or reconstruction will commence and end.
- (4) The name, address, telephone number, and E-mail address of a representative of the petitioner who can respond to inquiries concerning the anticipated construction.
- (5) For the purposes of this subrule, “construction” means physical entry onto private property by personnel or equipment for the purpose of rebuilding or reconstructing the electric line.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/30/09.